

The stimulator in this case is a last chance “roll of the dice” to see if it will succeed where other treatments have not. And it is an expensive “roll of the dice” with an \$8,000 to \$45,000 price tag. The claimant does not have the symptoms for which

a stimulator is recommended, and the evidence showed it is unlikely the stimulator will benefit the claimant. For that reason, it is not reasonable to proceed with dorsal column stimulator treatment in this case.

The claimant's main motivation seemed to be to withdraw from her relatively small dosage of Oxycontin. That could be accomplished without an expensive and probably ineffective stimulator. The dorsal column stimulator is not a necessary treatment in this case, either.

The claimant's request for additional medical treatment in the form of a dorsal column stimulator is denied.¹

Claimant contends Judge Hursh erred. Claimant contends a trial dorsal column stimulator, which has been recommended by her authorized physician, is reasonable as it might reduce (1) her chronic back pain, (2) her reliance on narcotics and (3) the resulting severe constipation. Accordingly, claimant requests the Board to order that she have a trial dorsal column stimulator and, if her physician should so recommend after the trial period, a permanent stimulator.

Conversely, respondent and its insurance carrier contend the Post Medical Award should be affirmed. They argue the dorsal column stimulator is neither reasonable nor necessary medical treatment. They contend claimant exaggerates the severity of her constipation, that her narcotics use is relatively minimal and that the medical evidence establishes that she is not a proper candidate for the procedure.

The only issue before the Board on this appeal is whether the trial dorsal column stimulator is reasonable and necessary medical treatment for claimant's low back injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the parties' arguments, the Board finds and concludes:

Claimant injured her low back on May 28, 1997, and again on June 30, 1997, while working for respondent as a certified nurses' aide. Because of those injuries, in October 1997 Dr. Jeffrey T. MacMillan operated on claimant's low back, which entailed removing disc material and fusing the lower spine at two intervertebral levels – the fourth and fifth lumbar (L4-L5) and the fifth lumbar and first sacrum (L5-S1).

¹ ALJ Post Medical Award (Feb. 22, 2006) at 4.

The low back surgery resolved some of claimant's symptoms. But claimant remains in constant pain.² Consequently, claimant, who is now only 28 years old, has taken narcotic medications for the almost nine years following her low back surgery. Unfortunately, constipation is a side effect of the narcotics. And claimant's resulting constipation is so severe that she sometimes requires manual disimpaction.³

On January 20, 1999, the parties settled this docketed workers compensation claim and another, Docket No. 228,673. Under the terms of that settlement, claimant reserved her right to seek additional medical treatment for her low back injury.

The record is not entirely clear, but it appears claimant was receiving counseling in early 2005 when one of her counselors suggested she might benefit from a dorsal column stimulator. Consequently, in April 2005, claimant consulted her authorized treating physician, Dr. MacMillan, to determine if that procedure might benefit her. Claimant confided to the doctor that the narcotic she was taking, OxyContin, made her irritable, which adversely affected her marriage and her relationship with her children.

After first conducting an MRI to rule out that claimant was developing a degenerative disc above her earlier two-level fusion, Dr. MacMillan recommended a trial period of the dorsal column stimulator. At that point in time, claimant had already tried epidural steroid injections, a TENS unit and a variety of different medications such as Darvocet, Percocet, OxyContin, Naprosyn, Feldene, Bextra and Lidoderm patches.⁴

After being advised that respondent's insurance carrier was concerned whether claimant's fusions were solid, Dr. MacMillan ordered a thin-cut CT scan. Based upon that study, Dr. MacMillan concluded claimant's fusions were solid and the doctor again recommended the trial of a dorsal column stimulator.

Three doctors testified in this post-award proceeding about whether claimant should receive the dorsal column stimulator. Dr. MacMillan, who is a board-certified orthopedic surgeon, believes claimant's medications are not providing adequate relief but, due to the side effects, increasing the medications is not a good option. Because claimant has mechanical low back pain, rather than neurogenic pain, Dr. MacMillan agrees that claimant is not an ideal candidate for the dorsal column stimulator. Nonetheless, the doctor feels a trial period of a dorsal column stimulator is appropriate as there are few other options

² P.A.H. Trans. at 12.

³ *Id.* at 10, 11.

⁴ MacMillan Depo. at 8.

and some people with mechanical back pain obtain great results. The doctor testified, in part:

See, the problem that you run into is that generally -- it's generally well accepted in the community of people who participate with patients who get dorsal column stimulators, people with neurogenic symptoms very predictably do well. The problem with people who have predominantly back pain is that the results are not predictably good. That doesn't mean that the results are not good. It just means that if you have a large group of patients with back pain, some of them will do great with the dorsal column stimulators, a lot of them will do mediocre and some of them will do very poorly. Now the problem that you have is that if you take any one individual, you can't anticipate whether that person is going to be one of the ones who does great, one of the ones who does mediocre or one of the ones who does poorly. There's no way of knowing.⁵

Nevertheless, Dr. MacMillan recommends that claimant be allowed to try the dorsal column stimulator.⁶ And if the trial is successful, the stimulator should be implanted. If the stimulator works, "it should allow her to significantly diminish her use of narcotics and improve her lifestyle."⁷

But if the stimulator is not successful, Dr. MacMillan suggests that claimant consider an intrathecal narcotic pump. Unfortunately, the pump's drawback is that it might require increased dosages over time to obtain the same benefit.

On the other hand, Dr. Edward J. Prostic, who examined claimant in May 2005 at respondent and its insurance carrier's request, suspects claimant's fusion is not solid. Consequently, Dr. Prostic believes, if claimant were to undergo any surgery, she should have her fusion redone from the posterior with screws and rods. But the doctor does not believe claimant should undergo any type of surgery, including the dorsal column stimulator, due to her mental state. In addition, Dr. Prostic, who is also a board-certified orthopedic surgeon, questions whether the dorsal column stimulator would benefit claimant as she does not have symptoms radiating into her legs.

Respondent and its insurance carrier also hired Dr. Steven L. Hendler to examine claimant for purposes of this claim. Dr. Hendler, who is board-certified in physical medicine and rehabilitation, saw claimant in early January 2006 and concluded claimant was not a

⁵ *Id.* at 33-34.

⁶ *Id.* at 28.

⁷ *Id.*, Ex. 8.

good candidate for a dorsal column stimulator. In summary, Dr. Hendler did not feel claimant would benefit from the procedure as her back pain did not extend to her legs, he thought claimant's pain relief while pregnant was atypical, he did not think a stimulator would resolve her constipation problem, he did not feel claimant's narcotic use was an issue and, finally, he felt claimant's psychiatric history was not consistent with someone who would likely gain significant benefit from the procedure. Accordingly, Dr. Hendler did not recommend the dorsal column stimulator procedure.

Both Dr. Prostic and Dr. Hendler cited claimant's psychological state as a factor that weighed against her having the requested procedure. But a September 13, 2005, letter from licensed psychologist Bruce Michael Cappo, Ph.D., to claimant's attorney indicates that he had recently assessed claimant's status and determined that claimant was stable enough to be considered for surgery from a psychological standpoint.

Weighing the various considerations, the Board is persuaded by Dr. MacMillan's opinions that the dorsal column stimulator is reasonable treatment in this instance. Therefore, under these particular circumstances the Board finds the trial of a dorsal column stimulator to be reasonable and appropriate medical treatment. There is no guarantee the stimulator will relieve claimant's pain, but the potential benefits from the procedure outweigh the major drawback, which is the expense. Consequently, the February 22, 2006, Post Medical Award should be reversed to allow claimant to undergo a trial period of a dorsal column stimulator.

At this time the Board does not authorize the permanent dorsal column stimulator as respondent and its insurance carrier should be allowed the opportunity to evaluate claimant's progress during the trial period and, if necessary, object to a permanent implant. Consequently, should the parties disagree as to the appropriate course of medical treatment following the trial phase of the dorsal column stimulator, the parties upon proper application may seek additional relief from the Judge.

WHEREFORE, the Board reverses, in part, the February 22, 2006, Post Medical Award and grants claimant's request for a trial dorsal column stimulator. The Board affirms the remainder of the Award.

Claimant filed her amended application for review in this appeal under Docket Nos. 228,672 and 228,673. As it appears the appeal under Docket No. 228,673 was made in error, the Board dismisses that appeal.

IT IS SO ORDERED.

**DENISE LICKTEIG f/k/a
DENISE GILLETT**

DOCKET NO. 228,672

Dated this ____ day of May, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary L. Jordan, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director